

SENATE RECORD VOTE ANALYSIS

104th Congress
2nd Session

Vote No. 8

February 1, 1996, 4:50 p.m.
Page S-720 Temp. Record

TELECOMMUNICATIONS REFORM CONFERENCE/Passage

SUBJECT: Conference report to accompany the Telecommunications Competition on Deregulation Act of 1995 . . . S. 652. Agreeing to the conference report.

ACTION: CONFERENCE REPORT AGREED TO, 91-5

SYNOPSIS: The conference report to accompany S. 652, the Telecommunications Competition and Deregulation Act of 1995, will amend telecommunications laws and reduce regulations in order to promote competition in the telecommunications industry by eliminating Federal, State, and local barriers that prevent telephone companies, cable companies, and broadcasters from entering one another's markets. It will also permit utility holding companies to enter the cable and telephone markets. Judicial control of telecommunications policy, including the "Modified Final Judgment" regime, will be terminated. Details include those provided below.

Local telephone competition:

- All State and local barriers to competing with the telephone companies will be preempted upon enactment of S. 652;
- local exchange carriers (LECs; phone companies) will be required to negotiate, in good faith, interconnection agreements with any telecommunications carriers that wish to use their facilities and equipment; each such agreement will meet certain minimum requirements, including that it will provide for the following: the right for a carrier to buy, for resale, telecommunications services at reasonable and nondiscriminatory wholesale prices; unbundled access to network functions and services; unbundled access to facilities and information necessary for transmission, routing, and interoperability of both carriers' networks; interconnection at any technologically feasible point; interconnection that is at least equal in type, quality and price as the LEC provides itself or others; access to poles, ducts, conduits, and rights-of-way; telephone number portability (the ability of consumers to change phone companies without changing their phone numbers); and local dialing parity (the ability of consumers to use competing phone companies without having to dial extra digits);
- a State may arbitrate and decide an agreement after 135 days of negotiations, and every interconnection agreement will be subject to State approval;

(See other side)

YEAS (91)				NAYS (5)		NOT VOTING (3)	
Republican (51 or 98%)		Democrats (40 or 91%)		Republicans (1 or 2%)	Democrats (4 or 9%)	Republicans (1)	Democrats (2)
Abraham	Helms	Akaka	Hollings	McCain	Feingold	Gramm ⁻²	Dodd ⁻²
Ashcroft	Hutchison	Baucus	Inouye		Leahy		Rockefeller ⁻²
Bennett	Inhofe	Biden	Johnston		Simon		
Bond	Jeffords	Bingaman	Kennedy		Wellstone		
Brown	Kassebaum	Boxer	Kerrey				
Burns	Kempthorne	Bradley	Kerry				
Campbell	Kyl	Breaux	Kohl				
Chafee	Lott	Bryan	Lautenberg				
Coats	Lugar	Bumpers	Levin				
Cochran	Mack	Byrd	Lieberman				
Cohen	McConnell	Conrad	Mikulski				
Coverdell	Murkowski	Daschle	Moseley-Braun				
Craig	Nickles	Dorgan	Moynihan				
D'Amato	Pressler	Exon	Murray				
DeWine	Roth	Feinstein	Nunn				
Dole	Santorum	Ford	Pell				
Domenici	Shelby	Glenn	Pryor				
Faircloth	Simpson	Graham	Reid				
Frist	Smith	Harkin	Robb				
Gorton	Snowe	Heflin	Sarbanes				
Grams	Specter						
Grassley	Stevens						
Gregg	Thomas						
Hatch	Thompson						
Hatfield	Thurmond						
	Warner						

EXPLANATION OF ABSENCE:

- 1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:

- AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

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● a local exchange carrier will make any interconnection, service, or network element it provides under an agreement to another carrier to any other carrier that requests it under the same terms and conditions as provided in the agreement (see 104th Congress, 1st session, vote No. 261 for related debate);

● to the extent that a State fails to carry out its responsibilities regarding interconnection agreements, the Federal Communications Commission (FCC) will assume jurisdiction;

● the FCC or a State will be able to waive the minimum interconnection requirements for rural phone companies (except for video programming offered by such companies); and

● the FCC will decide whether to classify mobile-phone companies as LECs.

Universal service:

● the FCC will base its universal service policies on the following principles: quality services should be available at just, reasonable, and affordable rates; access to advanced telecommunications and information services should be provided in all regions of the Nation; consumers in all regions of the Nation, including low-income and rural areas, should have access to telecommunications and information services; all providers of telecommunications services should make an equitable and nondiscriminatory contribution to pay for providing universal service; a specific and predictable support mechanism should be established for providing universal service; and public and nonprofit schools, libraries, and health care providers should have access to advanced telecommunications services;

● the FCC will define universal service, and periodically will redefine it as technologies evolve;

● a Federal-State Joint Board will be created to recommend which services will be offered under universal service and to recommend rules for implementing universal service;

● a State may add services to the universal service definition to meet its needs;

● all telecommunications providers will be required to contribute to pay for providing universal service;

● both the FCC and the States may require contributions for universal service;

● universal service payments will be used to ensure that a public or nonprofit rural health care provider will be charged rates for telecommunications services that are reasonably comparable to the rates charged urban health care providers in the same State;

● universal service payments will be used to provide discounted telecommunications services to public and nonprofit elementary schools, secondary schools, and libraries; and

● interexchange (phone calls across area codes) rates charged by a company will be the same in the high cost, rural, and low cost areas it serves.

Long distance BOC relief:

● (background) in a consent decree referred to as the Modification of Final Judgment (MFJ), AT&T agreed to stop providing local phone services; its local phone companies were divided into seven Regional Bell Operating Companies (RBOCs), which are holding companies that contain both Bell Operating Companies (BOCs) and other services; the number of BOCs (approximately 20) is not governed by the consent decree; the decree also created Local Access and Transport Areas (LATAs); there are currently 198 LATAs; a BOC may provide phone service within a LATA, but it may not provide phone service across LATA boundaries; the courts administer the MFJ (this Act will end that administration);

● a BOC will be permitted to provide interLATA phone service originating in a LATA in which it provides local service under three conditions (see 104th Congress, 1st session, vote Nos. 243 and 250 for related debate): it must meet a list of requirements to make its local services available at wholesale costs to its competitors (this condition may be met whether or not any competitors emerge to use those services); the FCC must certify that such service is in the public interest; and the service must be offered (initially) through a subsidiary;

● the FCC will receive and give substantial weight to the Justice Department's antitrust evaluation of a BOC's application to provide long-distance service before determining if a BOC has met the necessary three conditions, but that evaluation will not have any preclusive effect on any FCC decision;

● the requirement to provide services through a subsidiary will sunset after 3 years;

● a BOC will be permitted to offer interLATA services originating outside of LATAs in which it provides local phone service immediately upon enactment;

● any part of the MFJ not modified or superseded by this Act will be administered by the FCC (see 104th Congress, 1st session, vote No. 248); and

● a BOC will be permitted to provide certain incidental interLATA services, including cable, commercial mobile phone (see 104th Congress, 1st session, vote No. 247), and interactive educational services, upon enactment.

Manufacturing authority for BOCs:

● upon receiving permission to provide interLATA services, a BOC may begin manufacturing telephones and telephone equipment (the MFJ currently prohibits such manufacture);

● it must use a separate affiliate for manufacturing (this requirement will sunset in 3 years);

● it must meet requirements on standards and certifications (for instance, it may not set standards that discriminate in favor of its manufactured goods); these requirements will terminate when the FCC determines that alternative sources of industry-wide

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standards and certifications exist;

- it must make its manufactured goods available to others without discrimination or self-preference;
- for the duration of its subsidiary requirement, it will not discriminate in favor of its affiliate's equipment; and
- disputes regarding standards and certifications will be resolved using an alternative dispute resolution process.

Other BOC provisions:

- BOCs will not engage in electronic publishing through their phone lines for the next 4 years; this ban will not apply to publishing through affiliates or joint ventures;
- BOCs and their affiliates will not provide alarm monitoring services (except to the extent they are already providing such services) for the next 5 years;
- a BOC will not subsidize its payphone service directly or indirectly from its telephone exchange service, nor will it otherwise discriminate in favor of its payphone service; and
- except for single-LATA States and States that issued an order before December 19, 1995 that required intraLATA toll-dialing parity, a State may not require a BOC to implement toll dialing parity in an intraLATA area before it has been granted authority to provide interLATA services in that area or before 3 years after the date of enactment of this Act.

Cable competition, video dialtone, and direct-to-home satellite services:

- telephone companies will be permitted to offer cable services upon enactment;
- State and local barriers to cable companies offering other telecommunication services will be removed upon enactment;
- cable subscribers will be allowed to purchase set-top cable boxes from retailers;
- direct-broadcast satellite services will not be subject to local taxation;
- cable companies will pay the same rate for pole attachments as long as they provide only cable services; once they start providing phone services, higher rates may be imposed and phased in over 10 years;
- cable operators that do not use public rights of way will be exempt from Federal cable regulations;
- the FCC's "video dialtone" (cable service through phone lines) rules will be eliminated;
- a phone company, in effect, will be able to self-certify that it will offer open video services, and the FCC will act on that certification within 10 days;
- cable television operators will be allowed to broaden their services without first obtaining approval from local cable franchising authorities;
- existing restrictions on the right of cable system owners to sell their systems will be removed;
- rate regulation will be maintained for basic and expanded tier programming for cable operators that do not face effective competition, which will be defined as competition (other than direct broadcast satellite competition) that offers comparable programming services; "comparable" is intended to mean at least 12 channels; regulations will be lifted when effective competition exists;
- expanded tier programming will not be subject to regulation after March 31, 1999 (see 104th Congress, 1st session, vote Nos. 248 and 266 for related debate);

● rate regulation for companies serving 50,000 or fewer subscribers will be ended upon enactment (basic tier regulation will be ended for small companies that did not provide expanded tier programming as of December 31, 1994); and

● provisions will be enacted to bar a local phone company from buying more than 10 percent of its local cable system, and a local cable system from buying more than 10 percent of its local phone company; exceptions will be made for rural systems and for competitive markets.

Objectionable telecommunications:

- expedited judicial review procedures will be followed for any constitutional challenges to this bill's provisions on objectionable communications;
- providers and users of telecommunications services will not be civilly liable for attempting to restrict access to obscene, indecent, or harassing communications;
- cable programmers will be permitted to refuse to transmit on public or leased access channels programs which contain obscenity, indecency, or nudity;
- sexually explicit cable programming will be fully scrambled (see 104th Congress, 1st session, vote No. 249);
- violence ratings for television broadcasting will be developed, a system to allow the blocking of violent broadcast signals will be developed (see 104th Congress, 1st session, vote Nos. 256 and 257), and new televisions sold in the United States will have to be equipped with an apparatus (a "v-chip") that will make it possible for a viewer to block broadcasts based on their ratings (the FCC will determine the effective date of this provision, which will be no later than 2 years after the date of enactment); and
- certain obscene, indecent, and harassing computer communications will be criminalized (see 104th Congress, 1st session, vote No. 263).

Broadcasting and spectrum allocations:

- limits on the number of radio stations that any one entity may own will be eliminated, though the number of stations any one entity may own in a single market will be limited based upon the number of stations in that market;

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● limits on the number of television stations that any one entity may own will be eliminated, the "duopoly rule" limiting one entity to owning only one station per market will be reviewed and relaxed, and the percent of the national television market that any one entity will be allowed to reach will be raised to 35 percent from the current 25 percent;

● S. 652 will not give the FCC the authority to auction the broadcast spectrum that has been set aside for advanced television services (including digital television); initial eligibility for that spectrum will be limited to current license holders; the value of this spectrum is conservatively estimated to be \$30 billion; without this authority, it is likely that this spectrum will be given to the television networks for free;

● television broadcast licenses will last for 8 years instead of 5 years;

● radio broadcast licenses will last for 8 years instead of 7 years; and

● broadcast license procedures will be streamlined; renewal applicants will be entitled to renewal absent any serious violation of FCC rules.

Miscellaneous:

● all Federal, State, and local entry barriers into telecommunications by utilities will be removed upon enactment; provisions will be enacted to ensure that utility ratepayers are not made to subsidize telecommunications services;

● the FCC will review biennially all regulations issued under this Act to determine if they are in the public interest;

● the FCC will be permitted to forbear from enforcing a regulation when in the public interest; forbearance may be deemed by the FCC to be in the public interest if it will promote competition;

● the FCC will be permitted to strike State and local requirements that prohibit any entity from entering a telecommunications market, though it will not be permitted to preempt competitively neutral and nondiscriminatory local right-of-way requirements (see 104th Congress, 1st session, vote No. 258 for related debate);

● any preexisting agreements to allow charges for "1-800" phone calls must be in writing, and rates must be disclosed; and

● this Act will not be construed as modifying, impairing, or superseding the application of any antitrust laws.

Those favoring passage contended:

The benefits that will come from enactment of the Telecommunications Reform Act are enormous. A study by the Wharton Econometrics Institute found that it will create 3.4 million jobs by the year 2005, will cause a \$298 billion increase in the gross domestic product (GDP) within 10 years, and will save consumers nearly \$550 billion over the next 10 years on phone bills alone. The telecommunications industry is currently responsible for 15 percent of the GDP. It is shackled by government regulations, with segments of it carefully controlled and protected from competition. This bill will weaken the shackles and end the monopolies. It is not a total deregulation bill--it is only an interim, albeit enormous, step. In 10 years or 15 years, after the industry progresses, we will be back again with further improvements.

The most contentious issues in the conference were the role, if any, that the Justice Department would have on the Bell Companies entry into the long-distance market, universal service requirements, the terms under which broadcast spectrum for advanced television services would be allocated, and the restrictions on obscene and indecent communications. None of these issues were resolved to the satisfaction of all Senators. However, the results generally reflect the results that were achieved on earlier Senate votes.

For instance, we know from earlier votes that a majority of Senators favor the restrictions that are in the conference report on obscene and indecent communications. Several votes were held on the issue, and the language that is in this conference report was adopted overwhelmingly on those votes. The well-established legal definitions for obscene, harassing, and indecent communications that have been employed for decades were adopted. Anyone, for instance, who posts indecent material on the Internet in areas accessible to children will be held to account. We fully agree with establishing these restrictions. One of the most urgent questions in any modern society is how to humanize technology. America is at the frontier of human knowledge, but it is incomplete without applying human values. One of our most important values is the protection of our children--not only the protection of their bodies from violence, but the protection of their minds and souls from abuse. Right now children who use the Internet have ready access to images of perversion and brutality beyond normal imagination and the boundaries of human civilization. This situation must not be allowed to stand.

The Bell Companies, the long distance companies, the utilities, the broadcasters, and the cable companies all strongly support passage of this conference report. They are all willing to give up their protections from competition in return for the chance to compete with each other in each other's markets. We are delighted to have the opportunity to vote to end the era of regulated telecommunications monopolies, and to usher in an era of competition, choice, growth, and lower prices.

Those opposing passage contended:

Argument 1:

Many Senators have expressed delight with the "improvements" that were made to the Senate bill in conference. Those

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"improvements" were mostly to increase the amount of regulation of the communications industry that will exist after this deregulation bill is passed. Universal service requirements, which have the government determining prices for services instead of the market, were increased, and the involvement of the Justice Department in regulatory decisions was increased. We oppose these "improvements." The market should be allowed to operate without Government interference.

Perhaps our main objection to this conference report, though, is that it will not give the FCC the authority it needs to auction the spectrum for advanced television services that has been set aside for those services. Without that authority, we fear that the FCC will give that spectrum away for free, either willingly or by court order, to the television networks. A conservative estimate of the value of that spectrum is \$30 billion. When the United States is cutting back spending on numerous meritorious programs in an effort to rein in the \$5 trillion and growing debt, it is a moral outrage that the rich television networks may soon get a \$30 billion gift from the Government.

We commend Senator Dole for his efforts to require the auctioning of this spectrum. For some time this conference report was delayed due primarily to those efforts. He had some success--the FCC sent him a letter promising that action would not be taken before 1997, which would give Congress time to pass legislation blocking the FCC from giving this spectrum away. Senator Dole is satisfied with the FCC's assurances; we are not. We agree instead with Speaker Gingrich, who said that Senator Dole was "rolled" on the issue.

The telecommunications industry needs to be deregulated, and we favor many parts of this conference report. Unfortunately, this report also fails to make many needed reforms, and contains one of the most egregious special-interest giveaways we have ever seen in our years in Congress. These flaws are severe, and are great enough to warrant the rejection of this conference report.

Argument 2:

We oppose this conference report because of its restrictions on free speech. The Internet undeniably contains a great deal of extremely offensive material, much of it pornographic, and much of it readily accessible by children. We, like our colleagues, do not want it possible for anyone, especially children, to be exposed unwillingly to the filth that pollutes cyberspace. However, this report goes way too far. It will not merely target the type of speech and images which virtually everyone agrees are obscene; it will also target indecent speech. In fact, so-called indecent speech is its main target, because obscene speech via criminal networks--obscenity, child pornography, and child exploitation--has already been criminalized. Indecent speech is far more difficult to define for a society, because individual standards vary so widely. Parents of course wish to protect their children from exposure to materials that they consider indecent, but the problem is that parents have very different standards of what actually is indecent. The Federal Government, therefore, is not equipped to decide what is permissible. The better solution is to allow the free market and parents to handle the problem themselves. New technologies are being developed that will allow parents to screen their children's access to various sites on the Internet, and parents as always must be vigilant in rearing their children. They should not be lulled into a false sense of security by a Government prohibition on indecent communications, because they may find too late that the Government and they have far different ideas of what exactly is indecent.

The constitutional right to free speech is the most important right in a democracy. The most recent, breathtaking expansion of that right has been the growth of the Internet. We do not want to restrict the phenomenal growth of this network by sanitizing the speech that is used on it. Though this conference report contains many meritorious provisions, we cannot vote for its adoption due to its Internet restrictions.